



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Ms. D. Kay Woods
Abernathy, Roeder, Robertson & Joplin
P.O. Box 1210
McKinney, Texas 75069-1210

OR95-812

Dear Ms. Woods:

You have asked if certain information is subject to public disclosure under the Texas Open Records Act, Government Code Chapter 552. Your request was assigned ID# 33847.

The City of Frisco (the "city") received a request for information concerning Frisco Municipal Utility District No. 1. The requestor asked for a variety of records, but you have submitted to this office only five documents that you contend are excepted from disclosure. We assume that you have released all of the other requested records.¹ You contend that the five documents at issue are excepted from disclosure pursuant to sections 552.101, 552.103(a), and 552.107.²

¹You submitted to this office minutes from a public meeting and a copy of legislation. These are public documents. Open Records Decision Nos. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"), 551 (1990) at 2-3 (laws or ordinances are open records). Our understanding is that these documents are not at issue.

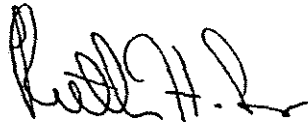
²You asserted an attorney-client privilege under the Texas Rules of Civil Evidence. Section 552.107(1) of chapter 552 is the appropriate exception to assert when a governmental body seeks to withhold information from public disclosure under the attorney-client privilege. Open Records Decision No. 574 (1990). You also asserted a number of other discovery privileges, but we note that whether information is excepted from disclosure depends upon whether one of the Open Records Act exceptions is applicable. Attorney General Opinion JM-1048 (1989) at 3, Open Records Decision No. 551 (1990) at 3-4 (purposes of Open Records Act and civil discovery provisions differ); *see also* Open Records Decision Nos. 575 (1990), 574 (1990).

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The information provided this office indicates that litigation is reasonably anticipated, and that the documents at issue are related to that litigation. Since the city has met its burden of showing that section 552.103(a) is applicable, the information at issue may be withheld from disclosure.

In reaching this conclusion, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

Because the information at issue may be withheld under section 552.103(a), we do not address your other arguments against disclosure.³ We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

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³You submitted a letter to this office, dated May 22, 1995, asking for a decision under section 402.042 of the Government Code as to whether your law firm had to comply with the Open Record Act's requirements. Sections 402.042 and 402.043 of the Government Code, which authorize us to issue opinions, set out the public officials who may request opinions. We are prohibited by section 402.045 of the Code from giving legal advice or a written opinion to any other person. We note, however, that the information requested was public information that apparently was released, and it is not the subject of this request.

Ref.: ID# 33847

Enclosures: Submitted documents

cc: Mr. Arthur J. Anderson
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Dallas, Texas 75270-2199
(w/o enclosures)